

**DIVISION CIRCULAR #3  
(N.J.A.C. 10:46)**

**DEPARTMENT OF HUMAN SERVICES  
DIVISION OF DEVELOPMENTAL DISABILITIES**

**EFFECTIVE DATE:** June 3, 2002

**DATE ISSUED:** June 28, 2002

(Rescinds Division Circular #3, "Eligibility for Services", issued August 18, 2000)

**I. TITLE: Determination of Eligibility and Contribution to Care and Maintenance Requirements**

**II. PURPOSE:** To establish guidelines and criteria for determination of eligibility for services, to individuals with developmental disabilities and their financial ability and that of their legally responsible relatives to contribute to the cost of care and maintenance in providing residential services.

**III. SCOPE:** This circular applies to all Division components.

**IV. POLICIES:**

- . . . The determination of an applicant's eligibility for services from the Division shall be completed as expeditiously as possible.
- . . . The requirement of an assessment for financial ability to pay shall apply only to those eligible individuals receiving services who have been residentially placed by the Division.
- . . . Individuals who have been determined ineligible for Division services may appeal the decision in accordance with the provisions of Division Circular #37, "Appeals Procedure" (N.J.A.C. 10:48-1 et seq.).

. . . If eligible individuals, their legal guardian, or legally responsible relative disagree with the financial determination, they may appeal the decision in accordance with the procedure set forth at N.J.A.C. 10:46-7.1(b) in this circular.

**V. GENERAL STANDARDS:**

**NOTE:** The remainder of this circular is the eligibility criteria and contribution to care and maintenance requirements as it appears at N.J.A.C. 10:46 et seq.

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James W. Smith, Jr.  
Director

## **DETERMINATION OF ELIGIBILITY AND CONTRIBUTION TO CARE AND MAINTENANCE REQUIREMENTS**

### **Subchapter 1 – General Provisions**

#### **10:46-1.1 Purpose; authority**

Pursuant to N.J.S.A. 30:1-12, 30:4-27.2, 30:4-25.2, Application for determination of eligibility, N.J.S.A. 30:4-25.9 [and] 30:6D-1 et seq. (P.L. 1985, c. 145) and 30:4-60 et seq. (P.L. 1995, c.155), the Division of Developmental Disabilities, Department of Human Services (Division), intends this chapter to establish guidelines and criteria for determination of eligibility for services, to individuals with developmental disabilities and their financial ability and that of their legally responsible relatives to contribute to the cost of care and maintenance in providing residential services.

#### **10:46-1.2 Scope**

The provisions of this chapter shall apply to all individuals making application to the Division for services under N.J.S.A. 30:4-165.1 et seq. The requirement of an assessment for financial ability to pay shall apply only to those eligible individuals receiving services who have been residentially placed by the Division. This does not include individuals residing in supported living arrangements, in private ICF/MR placements not funded by the Division, or those receiving Challenge Grants or participating in the self-determination project.

#### **10:46-1.3 Definitions**

The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.

“Application” means the form available at Division offices (see N.J.A.C. 10:46-3.2(a)). The term includes any supporting documentation necessary to the making of an informed determination with regard to applicant eligibility, including medical information. Supporting documentation may include but is not limited to educational, psychiatric, psychological, vocational, rehabilitation or social service records.

“Appropriate program of training” means that program of training which at a minimum includes orientation and instruction in identification of developmental disabilities, use of evaluation tools and interaction techniques.

"Assets or resources" means, but is not limited to, cash, trusts, bank accounts, certificates of deposit, stocks, bonds, mutual funds, real estate and savings bonds and personal property pursuant to N.J.S.A. 30:4-25.1a(8).

"Assistive devices" mean supports provided to aid in moving and positioning an individual while personal care is given, or which aid in communication.

"Assignment" means the written agreement of the individual to give the Department of Human Services the right to receive and collect any and all proceeds due to the individual from such items as insurance policies, annuities and law suit settlements.

"Burial fund" means an identifiable fund which is clearly designated and set aside for an individual's burial expenses.

"Case Management" means the linking and coordination of services across family agency and professional lines to develop and attain goals and objectives embodied in the Individual Habilitation Plan. It involves monitoring and advocating for the individual's needs with individual and family participation.

"Challenge Grant" refers to a program in which the Division provides funds to an agency, which may be used in combination with other resources available to the individual, which will meet the individual's needs sufficiently to allow the individual to be removed from the waiting list.

"Child" means an individual under 18 years of age.

"Commissioner" means the Commissioner of the State Department of Human Services.

"Consumer Price Index (CPI)" means the measure of the average change in prices over time in a fixed group of goods and services, as issued by the U.S. Department of Labor.

"Cost of care and maintenance" means the daily rate set by the State Board of Human Services for the residential placement of the individual or the daily rate set by the Commissioner of the Department of Human Services for community care homes (except respite homes) regulated under N.J.A.C. 10:44B multiplied by the number of days the individual is or was in the placement.

"Counseling" means advice or guidance provided by a person knowledgeable about services to individuals with developmental disabilities.

"Dependent" means an individual who meets the State and Federal income tax requirements for being claimed by the individual or the LRR(s) on State and Federal income tax forms.

“Developmental disability” means a severe, chronic disability of an individual which:

1. Is attributable to a mental or physical impairment or combination of mental or physical impairments;
2. Is manifest before age 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations, before the age of 22, in three or more of the following areas of major life activity, that is, self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living or economic self-sufficiency; and
5. Reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.
6. Developmental disability includes but is not limited to severe disabilities attributable to mental retardation, autism, cerebral palsy, epilepsy, spina bifida and other neurological impairments where the above criteria are met.

“Director” means the Director of the Division of Developmental Disabilities.

“Disposable income” means the total income from any and all sources, less Federal and State income taxes, FICA and deductions allowable in accordance with N.J.A.C. 10:46-2.5.

“Educational and related services” means those services and programs and/or therapies that are provided to a pupil in association with a free appropriate education.

“Family” means the LRR(s), any dependent minors and any other person(s) who are claimed on the LRR(s)’ income tax forms, and the individual receiving Division services.

“Family maintenance standard (FMS)” means the income needed to meet a family’s minimum needs. The FMS establishes the lower limit on the charges to the individual and/or the LRR for the individual’s care and maintenance. See N.J.A.C. 10:46-2.5

“Family support” means those services described under N.J.A.C. 10:46A.

"Fixed Income" means that the person is retired, receiving disability benefits, receiving public assistance or is not otherwise actively employed.

"Guardianship services" means those services and programs provided by the Division for the purpose of implementing its responsibility toward the individual with developmental disabilities for whom it is performing the services of guardianship of the person.

"Home adaptation" means renovations to the home within resources available to the Division to accommodate a person's physical or sensory disability.

"Income" means wages, benefits, interest earned, pensions, annuity payments, and support from a third party pursuant to statute, rule or order or by contract or any other receipt pursuant to N.J.S.A. 30:4-25.1a(7). Income does not include income earned by an individual receiving services, which is below the minimum wage rate.

"Intake team" means at least two staff, one of whom is the intake worker and one who is a psychologist, who are responsible to determine the eligibility criteria contained in N.J.A.C. 10:46 have been met.

"Legally responsible relative (LRR)" means a spouse, mother, father or adult child of an individual receiving services who is statutorily responsible for the cost of care and maintenance pursuant to N.J.S.A. 30:4-66.

"Marginal income" means the total amount remaining after the cost of the FMS is subtracted from the disposable income.

"Medical cost standard (MCS)" means the minimum amount needed to meet a family's medical cost. The MCS establishes a maximum limit on the charges to be included in the FMS. See N.J.A.C. 10:46-2.5,

"Medical information" means reports that have been provided by licensed practitioners which demonstrate the existence of a developmental disability as well as the individual's current physical condition and significant medical history.

"Mental illness" means a current substantial disturbance of thought, mood, perception or orientation which significantly impairs judgment, behavior or capacity to recognize reality but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome or developmental disability (PL 1987, c116).

"Mental impairment" means impairment in cognitive, neurological, sensory or cerebral functioning resulting from other than mental illness.

"Other interested party" means representative payee, trustee or executor, or guardian of the property, as applicable.

"Physical impairment" means an impairment in motor functioning resulting from other than mental illness.

"Personal care" means assistance in essential daily activities such as bathing, dressing, transferring, toileting, feeding, grooming and hygiene.

"Plan to achieve self support (PASS)" means a written course of action approved by the Social Security Administration in accordance with 20 C.F.R. 416.1226. A PASS allows an individual to set aside income and/or resources for a specified period of time for a work goal. Resources set aside under a PASS are not counted toward the \$2,000 resource limit for SSI eligibility purposes. If income is set aside under a PASS, it is not counted in determining the SSI benefit payment amount. A PASS may be used to set aside money for education, vocational training, or starting a business.

"Primary residence" means the individual's living arrangement as follows: if he or she lives independently; if the individual resides with his or her family; or the residence of his or her family that is the home of record for official purposes (that is, voter registration, income tax, census, etc.). Second homes or privately made residential placements cannot be considered to be a primary residence.

"Regional Administrator" means the staff member with administrative authority over community operations within several counties who oversee intake teams.

"Rehabilitation technology" means services which provide a systematic application of engineering methodology or scientific principles to meet the needs of, and address the barriers confronted by, individuals in areas that include education, employment, transportation, independent living, and recreation.

"Resident" means a person who is a domiciliary of New Jersey for other than temporary purpose and who has expressed an intention to have his or her primary residence in the State.

"Respite services" means a short-term arrangement to provide relief to the primary care giver(s) from continuous care of the person.

"Self-determination" means a service delivery system which allows an individual with developmental disabilities, in conjunction with his or her legal guardian, if any, family and selected friends to identify appropriate services and supports and determine how an individual budget, as well as

personal, family and community resources, can be used to develop a support plan which may include living arrangements such as shared living, supported living and other individualized housing and allow the individual to be an integral part of their community.

"Supported employment" means paid employment for persons with developmental disabilities who, because of his or her disability, need ongoing support to perform in a work setting. Supported employment is conducted in work sites in which people without a disability are employed.

"Supported living" means a form of community residence as defined at N.J.A.C. 1044A-1.3 in which the individual is responsible to pay for his or her room and board.

"Support services" means services provided to developmentally disabled individuals and their families that are generally of short term duration, or are a specific type of care, treatment, training, assistance or device that will help the individual avoid the need for more intensive care which would require coordination of a sequence of generic or specialized services.

"Team" means two or more Division employees and/or professionals holding appropriate certification and/or licensure in their respective fields who review recommendations regarding eligibility. The professions represented on the team may vary according to the presenting need for services. At least one member of the team shall have at least one year of experience in working with the developmentally disabled and have the following qualifications:

- a. A doctor of medicine or osteopathy.
- b. A registered nurse.
- c. A professional program staff person who is licensed, certified or registered, as applicable. If the professional program staff do not fall under the jurisdiction of State licensure, certification or registration requirements, he/she shall meet the following qualification:
  - i. To be designated as an occupational therapist, an individual shall be eligible for certification as an occupational therapist by the American Occupational Therapy Association or another comparable body.
  - ii. To be eligible as an occupational therapy assistant, an individual shall be eligible for certification as a certified occupational



therapy assistant by the American Occupational Therapy Association or other comparable body.

- iii. To be eligible as a physical therapist, the individual shall be eligible for certification as a physical therapist by the American Physical Therapy Association or other comparable body.
- iv. To be eligible as a physical therapist assistant, an individual shall be eligible for registration by the American Physical Therapy Association or be a graduate of a two year college level program approved by the American Physical Therapy Association or other comparable body.
- v. To be designated as a psychologist, an individual shall have at least a master's degree in psychology from an accredited school.
- vi. To be designated as a social worker, an individual must:
  - A. hold a graduate degree from a school of social work accredited or approved by the Council on Social Work Education or another comparable body; or
  - B. hold a Bachelor of Social Work degree from a college or university accredited or approved by the Council on Social Work Education or another comparable body.
- vii. To be designated as a speech language pathologist or audiologist, an individual shall:
  - A. be eligible for a certificate of clinical competence in Speech Language Pathology or Audiology granted by the American Speech Language Hearing Association or other comparable body; or
  - B. meet the educational requirements for certification and be in the process of accumulating the supervised experience required for certification.
- viii. To be designated as a professional recreation staff, an individual shall have a bachelor's degree in recreation or in a specialty area such as art, dance, music or physical education.
- ix. To be designated as a professional dietitian, an individual shall be eligible for registration by the American Dietetics Association.

- x. To be designated as a human services professional, an individual must have at least a bachelor's degree in a human services field (including but not limited to: sociology, special education, rehabilitation, counseling and psychology).

"Termination of services" means action taken by the Division under the circumstances set forth in N.J.A.C. 10:46-6 when an individual, LRR(s) or any other responsible party fails to make the assessed payment.

"Treasury Formula-DDD" means the method of determining the financial ability of an individual or LRR(s) to pay for care and maintenance for an individual receiving services, in accordance with N.J.A.C. 10:46-2.5.

## **Subchapter 2 – Eligibility Criteria**

### **10:46-2.1 General eligibility**

- (a) An individual determined to be developmentally disabled as defined in N.J.A.C. 10:46-1.2, and who is a resident of the State of New Jersey, shall be eligible for services of the Division contingent upon cooperation with the financial assessment investigation and payment of any fees assessed.
- (b) With regard to a child, the substantial functional limitation(s) shall be evaluated according to expectations based upon the child's chronological age.
- (c) With regard to an individual who has entitlements to a free public education pursuant to N.J.S.A. 18A:1-1, et seq., who is otherwise eligible, the expenses of educational and related services shall not be borne by the Division.
- (d) If a determination has been made by a local district board of education that an individual's educational needs can only be appropriately served in a living situation other than the individual's home, then the expenses of that resident placement shall not be borne by the Division.
- (e) For applicants who present documentation of mental retardation, the criteria for establishing the presence of mental retardation shall be an IQ score of less than 70, demonstrated as follows:
  - 1. The person has an IQ score of 60 to 69; and
    - i. There is an impairment in adaptive behavior; and/or
    - ii. There is a chronic medical problem; and/or

- iii. There is an impairment in behavioral, sensory or motor function and in the ability to perform basic skills; or
- 2. The person has an IQ score of 59 or below.
- (f) At the time of application, the individual, legal guardian and/or his or her LRR(s) shall be advised by Division staff that the Division shall conduct an investigation into the ability of the individual and/or LRR(s) to pay for services, if the individual is ultimately determined eligible and offered a residential placement. Individuals applying for support services only; in accordance with N.J.A.C. 10:46-2.3(b) through (d) shall not be required to submit financial information or pay a fee.
  - 1. The application shall clearly advise the individual, legal guardian, LRR(s) and other responsible parties that a determination of the ability to pay and agreement to pay shall be part of the eligibility process.
  - 2. The application shall clearly advise that if it is determined that there is no ability to pay but all other eligibility criteria are met, eligibility shall not be denied.
  - 3. The application shall clearly advise the individual, legal guardian, LRR(s) and other responsible parties that the ability to pay shall be reevaluated no less than annually, unless changed circumstances warrant more frequent evaluation as set forth at N.J.A.C. 10:46-2.4(o).
  - 4. The regional office of the Division shall provide to the individual and/or legal guardian, as part of the application, a financial information sheet with appropriate instructions, at the time of application.
  - 5. The individual, legal guardian, or other responsible parties shall provide all documents requested, including tax returns.
- (g) An investigation into the ability of the individual, and/or his or her LRR(s) and other responsible parties to pay for services shall occur after the Division has determined that the criteria for eligibility for functional services have been met and an offer of residential placement has been made. The individual, LRR(s) or other interested parties shall be notified in writing of their financial obligation by the Division, as set forth in (a) and (f) above.
- (h) Whenever possible, the determination of the ability to pay and the assessed amount shall be completed before the individual is residentially placed by the Division.
- (i) Individuals assigned to a waiting list for Division residential services and/or their legal guardians shall complete the financial information sheet included in the application. While an individual is on the waiting list, no

one shall be required to pay the cost of care and maintenance. On the date the individual is residentially placed by the Division, the requirement to pay begins. Once a residential placement is offered, and prior to actual placement, the individual, legal guardian and/or LRR(s) shall complete the Client Financial Data Packet (CFDP) and/or Legally Responsible Relative Financial Data Packet (LRRFDP) pursuant to N.J.A.C. 10:46-5.1. A specific financial assessment shall be completed no more than 120 days from receipt of the CFDP and/or LRRFDP and required documentation.

- (j) Should an individual be residentially placed by the Division on an emergency basis, the CFDP and/or LRRFDP required for a financial determination is due at the regional office for the area in which the placement is located no more than 28 days following the date of placement. If the information is not provided within the required time frames, the Division may consider the individual's circumstances on a case-by-case basis. Failure to provide the required documentation may result in the Department seeking any of the remedies set forth in N.J.A.C. 10:46-6.1.
- (k) For individuals already admitted to Division residential services prior to the (effective date of these rules), the Division shall review available financial data and request additional financial information as necessary. Should a request for additional information be made, the time frames contained in N.J.A.C. 10:46-5.1(a) shall be followed.

### **10:46-2.2 Residency**

- (a) It shall be the responsibility of the individual applying for eligibility, or his or her legal guardian, to establish residency in the State of New Jersey. Residency shall be determined in the following manner:
  1. A competent individual applying for eligibility shall be a resident of the State if he or she lives in the State as his or her primary residence.
  2. For minors, who are under 18 years of age, the place where the parents or legal guardian live shall determine the residence of the minor.
  3. For adults, who are 18 years and older, incapacitated and have a general guardianship, the incapacitated individual's residence will be that of the legal guardian unless the conditions listed in (a)3i below have been met. This paragraph also applies to persons placed as minors upon reaching 18 years of age.

- i. For incapacitated individuals applying for services whose legal guardian lives outside New Jersey, the guardian shall document that the incapacitated individual has established residency by establishing:
  - (1) That the incapacitated individual lives in New Jersey;
  - (2) That the incapacitated individual did not relocate to New Jersey for the purpose of obtaining services from the State of New Jersey;
  - (3) Through good faith, that the incapacitated individual applying for services intends to live in New Jersey. Objective factors that provide evidence of good faith include:
    - A. The length and likely duration of the incapacitated individual's residence in New Jersey (that is, the individual has resided in New Jersey for more than two years and he or she expresses no plans to move from New Jersey);
    - B. The incapacitated individual's financial or other connections to the locale (that is, the individual is employed locally, has local bank accounts, attends religious services); and
    - C. The incapacitated individual's subjective attachment to his or her living arrangements (that is, friends in the area, use of community recreational facilities).
- (b) If the incapacitated individual is admitted to services and the guardian moves out-of-state, the incapacitated individual may remain in Division services. Additionally, the legal guardian is free to request a discharge from services or an interstate transfer.
- (c) If any person has been placed in the State of New Jersey and that placement has been funded totally or partially by a public or private agency in another state, that person shall not be considered a resident of New Jersey.
- (d) For persons applying for services whose legal guardian is in the U.S. military service, residency may be established when the guardian declares his or her home of record to be New Jersey.

- (e) For individuals applying for services who are not U.S. citizens, the following must be satisfied to establish residency:
  - 1. The individual must be a permanent alien resident, or his or her legal guardian must be a U.S. citizen or a permanent alien resident; and
  - 2. The individual or his or her guardian must be a resident of New Jersey.

### **10:46-2.3 Presumptive Eligibility**

- (a) If the applicant appears to be eligible for services and manifests an emergent need for services from the Division, then such a person may be declared presumptively eligible by the Regional Administrator. The determination of presumptive eligibility shall be made within 5 days of the initial contact for services. The eligibility determination process shall be completed subsequent to the admission to service. If the person is found ineligible and has been receiving services under presumptive eligibility, immediate referral shall be made to the appropriate agency or agencies for services. That individual or his/her legal guardian shall be notified, in writing, that services will cease in 30 days.
- (b) If the individual appeals the decision of ineligibility in accordance with N.J.A.C. 10:48-1, the individual may continue to receive services until a Final Decision is rendered by the Division Director.

### **10:46-2.4 Services**

- (a) Services for developmentally disabled persons means specialized services or specialized adaptations of generic services provided by a public or private agency, organization or institution and directed toward the alleviation of a developmental disability or toward the social, personal, physical or economic habilitation or rehabilitation of a person with a developmental disability and includes case management, diagnosis, evaluation, treatment, personal care, domiciliary care, special living arrangements, training, vocational training, recreation, counseling of the person with the disability and his family, information and referral services and transportation services.
- (b) Respite service shall not be considered placement for the purposes of N.J.A.C. 10:46B.

- (c) All information required under N.J.A.C. 10:46-3.3 shall be required if the applicant disagrees with the initial recommendation for support services or subsequent to the provision of support services, more intensive services are desired.
- (d) Assistive devices may be made available to persons who live independently, in the home of a relative or in a home licensed under N.J.A.C. 10:44B, as follows:
  - 1. The assistive device is not available through an alternate funding source; and
  - 2. Assistive devices shall remain the property of the Division.
- (e) Home adaptation shall not be provided to persons determined presumptively eligible. Home adaptation may be provided once the individual is found eligible for services.
- (f) Respite services may be provided in the home or through a home licensed under N.J.A.C. 10:44A or 10:44B.

#### **10:46-2.5 Determination of financial ability to pay**

- (a) Once a residential placement is offered, the Division, or its appointed agent, shall conduct an investigation into the ability of the individual and/or LRR(s) to pay for the cost of care and maintenance, including, but not limited to, assets, resources, income or insurance of the individual or his or her LRR(s).
- (b) In accordance with the provisions of N.J.S.A. 30:1-12c, the Division shall, as needed, issue subpoenas to require testimony or to compel the production of documents in order to complete its investigation.
- (c) The individual, his or her legal guardian or LRR(s) shall authorize the release of information necessary to complete the financial assessment and annual reviews, at the time of the application for eligibility. All information required to complete the financial assessment shall be kept confidential pursuant to N.J.S.A. 30:4-24.3, except to the extent necessary to enforce the obligation to contribute.
- (d) The individual, legal guardian, LRR(s) and/or other responsible parties shall cooperate fully in obtaining the information needed for the investigation. Failure to cooperate may be a reason for a determination of ineligibility, withdrawal of an offer of residential placement or termination of services if already placed.
- (e) In its investigation, the Division, or its appointed agent, shall use the formula of financial ability to pay delineated in N.J.A.C. 10:46-2.6 to determine if the individual or his or her LRR(s) has sufficient income, assets, resources, finances or estate to pay for all or part of his or her cost

of care and maintenance as fixed by the State Board of Human Services or the Commissioner.

1. A written notice shall be sent which informs the individual, legal guardian and/or LRR(s) of the figures used and how the amount due was calculated.
  2. The individual, legal guardian, LRR(s) and/or other responsible parties may, at any time, inquire as to how the particular amount due to be paid was determined.
- (f) The individual, LRR(s), and/or other responsible parties shall make such payments as are required by N.J.A.C. 10:46-2.6 for the cost of care and maintenance as set by the State Board of Human Services pursuant to N.J.S.A. 30:4-23 et seq. and 30:4-60(b) (See Chapter Appendix incorporated herein by reference), beginning on the date of residential placement by the Division, to the following:

Treasurer, State of New Jersey  
DHS - DDD  
P.O. Box 35247  
Newark, New Jersey 07193-5247

- (g) The Division, or its appointed agent, shall determine the legal settlement of the individual using N.J.S.A. 30:4-49 through 73 to determine what state or county shall bear any cost of maintenance if the individual cannot pay. In no case shall the individual or other responsible parties be relieved of overall responsibility to repay the full costs of care and maintenance nor shall the LRR(s) be relieved of overall responsibility to pay the full amount assessed.
- (h) The county where the individual resides at the time of application shall be notified by the Division if the individual is determined eligible for services. The county of residence and the county of settlement, if different, shall make their records available for examination and provide copies of documents as needed by the Division, or its appointed agent, and shall fully cooperate with the Division, or its appointed agent, in the review and investigation of the ability to pay of the individual or his or her LRR(s).
- (i) All payments received by the county or State from the estate of the individual on behalf of any individual receiving residential services shall be treated as payments for current care and maintenance and retained by the Division to offset current costs. Pursuant to N.J.S.A 30:4-78, the only exception is if payment is made for a specific service period. Such a payment shall be shared in the same ratio between the Division and the county as those parties shared the cost for that period.
- (j) The individual and/or legal guardian shall apply for and maintain all current and future benefits for which he or she may be eligible including, but not



- limited to, Medicare, Medicaid, State and Federal benefits and any third party support pursuant to statute, rule, order or by contract. If the individual, legal guardian and/or LRR(s) does not apply for and maintain current and future benefits, procedures for termination of services, pursuant to N.J.A.C. 10:46-6, may be initiated.
- (k) Eligibility for services shall not be denied if the other eligibility criteria are met but the individual does not have the ability to pay. The determination of lack of ability to pay shall be made by the Division, or its appointed agent, and kept in the client record. The individual's ability to pay shall be reviewed annually.
  - (l) The individual and/or legal guardian shall agree to assign to the Division at the time of the offer of residential placement all rights to the support indicated in (j) above, unless specifically prohibited by Federal and/or State law or rule. For individuals already residentially placed by the Division on or before (the effective date of this rule), the assignment of those rights shall be made as soon as possible following (the effective date of this rule).
  - (m) The Division shall file a lien against the real and personal property of the individual receiving services for the full cost of care and maintenance received minus the amount paid and also against the real and personal property of an individual and/or the LRR(s) for any past due amount the LRR(s) was required to contribute to the cost of the individual's care and maintenance.
  - (n) If the full amount of the assessed monthly payment cannot be paid, the individual, legal guardian, LRR(s) and/or other responsible parties shall notify the Division immediately. The Division, or its agent, shall investigate and determine whether a new or revised monthly payment is to be made. Such reassessments shall be given priority to be completed by the Division or its agent.
  - (o) Payment calculations for the individual and/or LRR(s) shall be reviewed and revised annually by the Division or its appointed agent. If the Treasury Formula-DDD (B) (N.J.A.C. 10:46-2.6(k) is used, expenses reviewed by the IHP team and approved by the assigned State business office shall be considered an annual budget for the individual. If the financial circumstances of the individual and/or the LRR(s) change prior to the annual review, the individual, other responsible parties or LRR(s) shall immediately notify the Division in writing at the Fiscal Office (M), Division of Developmental Disabilities, P.O. Box 170, Trenton, NJ 08601. Minor changes, as indicated below at (o) 1 through 3 shall not be the basis for an additional review. The individual, other responsible parties or LRR(s) shall be responsible to continue to pay as directed by the Division until the Division, or its appointed agent, completes its review. The requested review shall be given priority. If it is determined that a change in the assessed amount is appropriate, the change shall be effective on the first day of the month following the postmark date of the letter notifying the Division of a change in financial circumstances. For example, if the date

of notification was January 2, 1998, the effective date of the change would be February 1, 1998. The review shall be completed no more than 90 days following the receipt of all the requested documentation.

1. The annual calendar year increases to Social Security benefits and other periodic increases to benefits shall not be grounds for a revision to the annual budget for expenses. No requests for a revision of the assessed contribution for the cost of care and maintenance may be made under this circumstance. This increase shall be considered at the time of the next annual IHP.
  2. The individual, legal guardian, family, and/or other interested parties shall be invited to the annual IHP meeting. The scheduling of the IHP meeting shall facilitate the fullest possible participation of the individual, legal guardian, family and/or other interested parties. The Division shall accommodate reasonable requests in scheduling the date of the annual IHP meeting. If attendance is not possible at the meeting, requests for expenses may be submitted in writing prior to the meeting. If the individual, legal guardian, family and/or other interested party chooses not to participate in the IHP meeting, this lack of participation shall not be the grounds to request a revision of the annual budget for expenses. No request for a revision of the assessed contribution of care and maintenance may be made under this circumstance.
  3. If the individual, legal guardian, family and/or other interested parties do not use the entire amount potentially available at the time of the annual IHP meeting, that remainder shall not be the grounds to request a revision of the annual budget for expenses. No request for a revision of the assessed contribution for the cost of care and maintenance shall be made under this circumstance. The expenses shall be recalculated at the time of the annual IHP.
- (p) The individual shall remain liable for the unpaid balance of the cost of care and maintenance. The LRR(s) shall remain liable for any unpaid portion of the assessed amount.

#### **10:46-2.6 Treasury Formula - DDD**

- (a) The purpose of this section is to set forth the assessment methodology used by the Department of Human Services for determining the financial ability to contribute toward the cost of care and maintenance of an individual with a developmental disability, and the procedure for the collection of such contribution. This section shall apply to the individual being served, LRR(s) or any other person responsible for the estate of such individual and/or LRR(s). The family maintenance standard, the medical cost standard and the tuition deduction shall be revised annually, using the Consumer Price Index figures then applicable and the cost for in-State tuition at Rutgers, the State University. These revisions shall be published annually by the Department as a public notice in the New Jersey Register. Additionally, the Department shall publish in the New

Jersey Register, the cost of care and maintenance rates as established by the State Board of Human Services.

- (b) The Treasury Formula - DDD(A) charges 20 percent of family income above a minimum cost of living standard to clients with financial dependents (claimed on individual's State and Federal income tax forms) and LRR(s) except as provided in (l) below.
- (c) The family maintenance standard (FMS) shall be used to define the income necessary to meet a family's minimal needs. The FMS establishes the lower ceiling on charges by assuring that payments to the Department do not reduce the family's income below this amount. The FMS is tied to an authoritative cost of living standard which reflects inflationary increases. Adjustments in the FMS are made by using the current available 12 month change in the Consumer Price Index (CPI), October through October, for Urban Wage Earners and Clerical Workers for New York/Northeastern New Jersey and the Philadelphia Metropolitan regions. This CPI standard, compiled for a family of four, is changed into equivalent incomes for various family sizes using a scale provided by the Federal government. (See Examples 1 and 2 below.)
- (d) The family maintenance standard shall be calculated by the Department in the following manner. (The steps listed below coincide to the numbered instructions shown in Example 2 below.)
  - 1. Step 1 - Indicate adjustment months. The adjustment months will be the months of October of the previous year and October of the current year.
  - 2. Step 2 - Determine the difference in the Consumer Price Index. For each region, determine the difference in the Consumer Price Index of "all items" by subtracting last October's CPI from the index information received from the current October report.
  - 3. Step 3 - Calculate the Consumer Price increase or decrease. Calculate the percentage increase or decrease in the CPI for each region. The difference for each region divided by last October's CPI by region will equal the percentage of increase or decrease.
  - 4. Step 4 - Determine average increase or decrease. Calculate the average or the percentage increases or decreases for the regions.
  - 5. Step 5 - Adjust the FMS Base (a family of four). Multiply the current standard by the average regional CPI increase or decrease calculated in Step 4, and add the answer to, if an increase, or

subtract the answer from, if a decrease, the current standard to obtain the new standard.

6. Step 6 - Determine the FMS for smaller and larger families. Multiply the FMS calculated in Step 5 by the Equivalence Standards indicated in the Table in Example 2 below.
- (e) The medical cost standard shall be calculated by the Department using the same process described in (d) above for the FMS. The MCS computation, however, only uses the medical care cost component of the CPI. (See Example 1. below)
  - (f) The deduction for college tuition shall be the actual college tuition cost paid, but shall not exceed the maximum of the annual in-State tuition expenses for Rutgers University. The deduction shall be net of any scholarships, awards or grants, and shall cover tuition paid but shall not cover such items as room, board, books and lab fees. The maximum college tuition deduction for calendar year 1999 is \$4,762. This shall be revised annually as required by (a) above.
  - (g) The Treasury Formula - DDD(A) allows deductions from total income to accurately determine the disposable income. Allowable deductions shall be as follows:
    1. Major "unavoidable" expenses such as non-insured medical expenses in excess of the medical cost standard (MCS);
    2. Alimony payments or other court-ordered monthly contributions;
    3. College tuition in accordance with (f) above;
    4. Child care expenses which comply with current Federal income tax guidelines for the Federal child care credit; and
    5. Catastrophic events.
      - i. Deductions for catastrophic events shall include documented personal property losses from theft or natural catastrophes such as fire, flood or storm. Deductible losses resulting from a natural catastrophe shall have been caused by a sudden and destructive force. Damages occurring over time, such as termite infestation, or residing or painting a house as part of regular maintenance shall not be deductible losses. Situations resulting from extreme financial stress shall be considered as a catastrophic event. Some examples include large debts due to prolonged unemployment and

extraordinary business losses. The individual and/or LRR(s) shall provide verification of the claimed deduction(s).

- (h) The individual and/or LRR(s) shall provide to the Department State and Federal income tax forms and wage statements in all cases, except when the family can establish status as recipients of public assistance.
- (i) The total funds remaining, after the cost of the appropriate FMS is subtracted from the Disposable income, shall be the marginal income. The individual or LRR(s) shall contribute 20 percent of the marginal income.
- (j) Individuals with financial dependents, as defined in (l) below, and LRR(s) shall contribute in accordance with the following Treasury Formula - DDD (A):

Total Annual Income less Income Taxes and Allowable Deductions  
= Disposable Income

Disposable Income less Family Maintenance Standard = Marginal  
Income

Marginal Income multiplied by .20 then divided by 12 = Monthly  
Charge

- (k) Individuals without financial dependents and those required by (l) below to use this formula shall contribute in accordance with the following Treasury Formula - DDD (B):

- 1. Total Monthly Net Income less PNA and where documented, a plan to achieve self-support (PASS) = Disposable Monthly Income.
  - i. Where an individual has a PASS, as defined in 20 C.F.R. 416.1226, and approved by the Social Security Administration, that amount shall be deducted from the Total Monthly Net Income.
  - ii. A copy of the PASS, as approved by the Social Security Administration, shall be provided to the Division by the individual.
  - iii. The PASS may be in effect for 18 months and may be extended for another 18 months up to an overall limit of 48 months, as approved by the Social Security Administration.

- iv. The resources excluded under the PASS shall be deducted from the Total Monthly Net Income for the term of the plan, or until there is evidence that the time schedule has been completed, or the goal has been achieved, or the plan is not followed or the plan has been abandoned.
2. Fifty percent of Disposable Monthly Income shall be automatically contributed to cost of care and maintenance. If the monthly payment is less than \$20.00, the contribution shall be waived.
- i. Where an individual is required to contribute to a HUD rental, or otherwise pays directly for his or her housing costs as indicated in the Division's contract with the provider agency, that amount shall be deducted from the 50 percent contributed to the cost of care and maintenance.
  - ii. If an agency wishes to collect room and board directly from the person served, the agency may request to amend its contract with the Division by the amount it expects to collect. The amount collected shall be deducted from the 50 percent contributed to the cost of care and maintenance.
  - iii. A one-time allowance of up to \$1,500 may be taken for the cost associated with the appointment of a private guardian. This allowance may be deducted from the 50 percent automatically contributed for the cost of care and maintenance. A copy of the Court Order shall be provided to the Division by the guardian, once the guardian has been appointed. If, for any reason, any part of the allowance is not used for the appointment of a guardian, the unused amount of the allowance may be collected in one sum at a time established by the Division.
3. The 50 percent remainder of disposable income shall be potentially available for other expenses as specified below in (k) 3 i. through vi. if recommended by IHP team and approved by the assigned State business office of the Division as being determined to be reasonable, programmatically appropriate, consistent with individual need, and not otherwise provided by the Division. The approved expenses shall be considered an annual budget to be approved once a year unless there have been changes in the person's circumstances.
- i. Clothing allowances;
  - ii. Medical and dental expenses not covered by other sources;

- iii. Transportation costs when they are program related or an individual's family member(s) is unable to visit otherwise as determined by (r) below;
  - iv. Leisure and/or recreation activities as programmatically determined to be appropriate by the IHP team;
  - v. Burial fund. The amount which may be accumulated, shall be subject to any dollar amount limitation established by any statute, rule, order or contract which applies to the individual including Federal benefits; and
  - vi. Private guardianship expenses of up to six percent of the annual income of the individual without Court Order. The six percent may be exceeded under Court Order for an additional percentage. This expense shall not be permitted where the Division provides guardianship through the Bureau of Guardianship Services.
4. All earnings from employment below minimum wage shall be exempt from determining an individual's available income and shall not be considered part of the individual's disposable income. Contributions to the cost of care and maintenance from employment earnings at or above minimum wage shall be determined as follows:
- i. The first \$65.00 earned shall be exempt from any contribution requirements.
  - ii. After the first \$65.00 earned, 30 percent of all wages earned will be contributed towards the cost of care and maintenance. If the monthly payment is less than \$20.00, the contribution requirement shall be waived.
- (l) A married individual receiving residential services shall use the appropriate Treasury Formula - DDD as set forth below:
- 1. If two individuals who are married have no dependents and are living together or separately in Division residential placements each individual shall be assessed as an individual without dependents pursuant to Treasury Formula-DDD(B) in (k) above.
  - 2. If an individual is residentially placed by the Division and has a spouse and/or dependents who live elsewhere and the spouse and dependents receive public assistance and/or other Federal or State

benefits for themselves only, the spouse and/or dependents shall have no financial responsibility for the cost of the individual's care and maintenance. The individual shall be assessed as an individual without dependents pursuant to Treasury Formula-DDD(B) in (k) above.

3. If an individual is residentially placed by the Division, and has a spouse who resides elsewhere and the spouse has income and the dependents may or may not receive public assistance or benefits, the spouse's income shall be assessed pursuant to (j) above. The individual's income and benefits shall also be reviewed to determine past financial support to the dependents. If there is no evidence that support has been provided by the individual to dependents, the individual's income and benefits shall be assessed as an individual without dependents pursuant to Treasury Formula-DDD(B) in (k) above.
  4. If an individual is residentially placed by the Division and has a spouse, who resides elsewhere, and the spouse has an income and there are no dependents, the spouse's income shall be assessed pursuant to (j) above. The individual shall be assessed as an individual without dependents pursuant to Treasury Formula-DDD(B) in (k) above.
  5. If an individual is residentially placed by the Division and is financially responsible for a dependent and no public assistance or benefits are received on behalf of the dependent, the individual's income and benefits shall be assessed pursuant to Treasury Formula-DDD(A) in (j) above.
- (m) Assets shall be reported as such by the individual and LRR(s). The Department shall place a lien against the individual's assets for the unpaid cost of care and maintenance. A lien shall be placed against the assets of a LRR(s) for any unpaid portion of the LRR's required payments.
- (n) The individual and/or the LRR(s) shall supply information to the Department or its agent regarding current and former residences and financial circumstances. Financial information shall include a full disclosure of income, assets, resources and benefits. The individual and/or the LRR(s) shall supply to the Department information regarding insurance coverage, including name and address of any insurance company(s) providing coverage, and the identification number(s) applicable to the individual.
1. The data required by (n) above shall be the primary source of information for the Department's investigation into legal settlement



and the ability to contribute toward the care and maintenance of the individual. Where appropriate, the Department shall review other records, such as property tax records and any other source related to the information required.

2. The required information shall be updated annually by the individual and/or his or her LRR(s), or guardian or other person acting on behalf of the individual, using forms provided by the Department. The completed forms shall be returned to the Department or its agent within 20 days of the date mailed.
- (o) The individual, his or her LRR(s), legal guardian or other person acting on behalf of the individual shall notify the Department in writing of any change in the information submitted in accordance with (n)2 above.
  - (p) The individual shall receive a minimum personal needs allowance of \$40.00 per month from the funds received by the representative payee or from the individual's income. The personal needs allowance shall be used by the individual for his or her personal spending.
  - (q) Purchase made with the individual's funds shall be the personal property of that individual and shall be reserved for that individual's use.
  - (r) Any family member who is on a fixed income may request to have the travel expenses which he or she incurs to visit the individual residentially placed by the Division covered pursuant to subsection (k).

### **Subchapter 3 - Application**

#### **10:46-3.1 Who May Apply**

- (a) Application for services under this chapter may be made by the following individuals:
  1. An adult on his or her own behalf;
  2. The parents or guardian of a minor;
  3. An agency, public or private, on behalf of a minor of whom it has care and custody;
  4. A court having jurisdiction over a minor;
  5. The guardian of an adjudicated incompetent adult; or

6. A court of competent jurisdiction on behalf of an adult individual who appears to be developmentally disabled.
- (b) For applicants who apply for Family Support, the requirements of N.J.A.C. 10:46A shall apply.

### **10:46-3.2 Where to Apply**

- (a) Application shall be made to a regional office of the Division. The initial contact may be made to an intake worker by telephone, in writing, or by appearing in person.
- (b) If the intake worker determines that the request is for the services of the Division, he or she shall send the individual an application.
- (c) If the intake worker determines that the request is for services not offered by the Division, the intake worker shall offer to refer the individual to an appropriate agency. If the individual wishes to pursue the services of the Division, the intake worker shall send an application and information concerning services.
- (d) Application shall be made to a regional office of the Division. Forms and instructions may be obtained by writing to or calling:

#### **Regional Office**

Northern Regional Office  
1B Laurel Drive  
Flanders, NJ 07836  
(973) 927-2600

Upper Central Regional Office  
59 Main Street  
West Orange, NJ 07052  
(973) 324-2000

Lower Central Regional Office  
Capital Plaza  
240 W. State Street  
PO Box 700  
Trenton, NJ 08625  
(609) 292-4500

#### **Counties of Jurisdiction**

Sussex, Morris, Warren, Passaic,  
Bergen, Hudson

Essex, Somerset, Union

Middlesex, Monmouth, Mercer,  
Ocean, Hunterdon

Southern Regional Office  
Community Services  
101 Haddon Avenue  
Suite 17  
Camden, NJ 08103-1485  
(856) 614-3400

Camden, Atlantic, Gloucester,  
Cumberland, Salem,  
Cape May., Burlington

- (e) If the person for whom eligibility is sought does not live in New Jersey at the time of the application, the applicant shall indicate if they presently receive services from a state agency in the state where the individual resides. To apply for services from the State of New Jersey under the Interstate Compact on Mental Health (N.J.S.A. 30:7B-1 et seq.), the request shall be sent to the Regional Assistant Director, c/o Division of Developmental Disabilities, PO Box 726, Trenton, NJ 08625. The request shall be forwarded to the appropriate regional office for a determination of eligibility. All information required in N.J.A.C. 10:46-3. Shall be provided. All notice requirements contained in N.J.A.C. 10:46-4.2 shall be followed.

### **10:46-3.3 How to Apply**

- (a) Application shall be made on forms supplied by the Division.
- (b) Minimum information submitted shall include, but not be limited to:
1. Social data, such as name, address, telephone number, social security number, and present living arrangement;
  2. Medical information;
  3. Present program or employment type;
  4. Name, address and telephone number of the individual, if someone other than the person on whose behalf application is being made;
  5. Presenting request, such as the specific service(s) that may be desired if known by the individual; and
  6. Information for the individual's financial information sheet including basic information such as social security number and the amount and type of benefits received, and those documents as required in N.J.A.C. 10:46-2.1(f).
- (c) Accommodations shall be made available by the Division for applicants who cannot complete the application by him or her self. Applications may

be taken in sites other than the regional office. Applications may be taken at any site which will facilitate the determination of eligibility.

- (d) It is the responsibility of the applicant to cooperate with the Division in obtaining required records by signing consent to release of information forms and identifying individuals or agencies known by the applicant to be in possession of the needed records.
- (e) An application shall be deemed complete when there is sufficient information to make a determination of eligibility.

#### **10:46-3.4 Reapplication**

- (a) An individual who has been found ineligible by the Division may apply for services again at any time if:
  - 1. The individual is under the age of 22 and he or she has obtained a new evaluation(s) which supports that the eligibility criteria are met; or
  - 2. The individual is over the age of 22 and he or she has obtained a new evaluation(s) which clearly documents information directly related to the developmental period prior to age 22 which supports that the eligibility criteria are met.
- (b) The individual shall provide a copy of that evaluation(s) for review by the Division. The Division shall review the evaluation and notify the individual within 30 working days whether a new application for services will be accepted.
- (c) As used in this section, "evaluation" means a formal assessment using standardized measures by a professional, such as a physician, psychologist or other individual who can appropriately evaluate the individual's condition to determine whether the individual has a developmental disability.

### **Subchapter 4 – Determination Process**

#### **10:46-4.1 Determination**

- (a) A Division intake worker shall begin a case file upon receipt of an application for determination of eligibility for services.
- (b) The intake worker shall assist in completion of the application upon request of the applicant.

- (c) Upon receipt of an application including all necessary documentation, the intake team shall make a recommendation, in writing, based upon specific findings regarding eligibility pursuant to N.J.A.C. 10:46-2.
- (d) An intake team may make a decision concerning eligibility. If there is a question of eligibility, the intake team may:
  - 1. Conduct a face to face interview within 30 days; or
  - 2. Refer the matter to a second intake team, when there is a disagreement among the first team concerning eligibility.
- (e) The determination of the intake team(s) shall be made, in writing, within 10 working days and shall be based upon specific findings.
- (f) In cases where the matter is referred for further review, the intake team shall present the case record to the second team. The second team shall review the record and shall make a final determination.

#### **10:46-4.2 Notice requirements**

- (a) Division staff shall notify the applicant, in writing, of the status of the eligibility determination no more than 60 days from receipt of an application for determination of eligibility for services.
- (b) If the eligibility decision cannot be made within 60 days from receipt of an application for determination of eligibility for services, the applicant shall be advised, in writing, as to the specific reasons why a determination cannot be made, and shall be informed of the status of the application at least every 30 days. The written notice shall include the name and telephone number of a Division staff member for the person to contact regarding services.
- (c) If the applicant is determined eligible, Division staff shall notify the applicant, in writing, within 10 days of the determination and such notice shall include information regarding the service(s) deemed most suitable by the intake worker or the intake team.
  - 1. If the most appropriate services as determined by the intake worker or the intake team is not immediately available, the Division shall provide an alternate service.
  - 2. The Division shall also place the eligible individual's name on a waiting list for day or residential services in accordance with N.J.A.C. 10:46C.

- (d) If the individual is determined ineligible, the Division shall notify the individual in writing within 14 days of the determination. Such notification shall include specific criteria that were not met by the individual, and shall also include information regarding the individual's right to appeal the determination pursuant to N.J.A.C. 10:48-1. The individual shall bear the burden of proof and the burden of persuasion.
- (e) The statement of eligibility shall advise the individual, legal guardian and other responsible parties that payments for the cost of care and maintenance shall be required by the individual and/or LRR(s) depending on their financial ability to pay pursuant to the Treasury Formula-DDD.
- (f) The statement of eligibility shall indicate that admission to residential services shall be contingent upon the completion of the financial evaluation to determine the required contribution towards the cost of care and maintenance based upon the financial ability to pay as determined by the Treasury Formula-DDD in accordance with N.J.A.C. 10:46-2.5.
- (g) The specific amount to be paid shall be contained in a separate written notice which shall inform the individual, legal guardian and LRR(s) of the figures used and how the amount due was calculated.

## **SUBCHAPTER 5. OFFERS BY THE DIVISION**

### **10:46-5.1 Offer of placement**

- (a) At the time an offer of residential placement is made, the Client Financial Data Packet (CFDP) and/or Legally Responsible Relative Financial Data Packet (LRRFDP) shall be provided to the individual, legal guardian, LRR(s) and/or other responsible parties. If the completed CFDP and/or LRRFDP is not received within 28 days of the date of the request, the Division shall send, in writing, a reminder for the requested information. The reminder shall indicate that if no response is provided within 14 days, the offer shall be deemed to be rejected.
- (b) If an individual is placed on an emergency basis, the CFDP and/or LRRFDP required for a financial determination shall be provided to the regional office in which the placement is located no more than 28 days following the date of placement.
- (c) The Division or its agent will check the CFDP and/or LRRFDP for completeness and advise the preparer of any required additional documentation. Such documentation shall be provided to the Division within seven days of the date of notification of the required additional documentation.
- (d) When a completed CFDP and/or LRRFDP is received, the individual, legal guardian, LRR(s) and/or other responsible parties shall be notified in

writing of the specific amount to be paid monthly no later than 120 days following receipt of a completed CFDP and/or LRRFDP.

## **SUBCHAPTER 6. TERMINATION**

### **10:46-6.1 Notice of termination**

- (a) While N.J.S.A. 30:4-25.9 provides the Division with the ability to terminate any services to the eligible individual within 60 days if the conditions of eligibility are not complied with, when the assessed contribution to the cost of care and maintenance is not received in a timely fashion, in all instances the Division will take a number of interim steps prior to initiating such final action as delineated in this section.
- (b) When the required monthly payment has not been received by 60 days past the due date, the Division shall notify, in writing, the individual, LRR(s), other responsible parties and, if different, the individual's legal guardian, that the payment is at least 60 days past due.
  - 1. The Division shall require all payments to be made within 10 days of the date of the notification or negotiate a schedule of repayments.
  - 2. If all payments due are not received within the 10 day or negotiated period, the Division shall notify, in writing, the individual, his or her LRR(s), other responsible parties and, if different, his or her legal guardian that the Division may initiate termination, collection or other appropriate action. The notice shall include information regarding the right to appeal this determination in accordance with N.J.A.C. 10:46-7.
- (c) A notice shall be sent within 30 days of the date specified by the Division in accordance with (b) above, to the provider of the placement, consistent with the terms of this subchapter, indicating that the Division may initiate termination, collection or other appropriate action due to the lack of payment.
- (d) When there is a representative payee who has not paid the assessed amount, a notice shall be sent to the Social Security Administration or other agency or person administering benefits that the individual is in jeopardy of having his or her placement terminated. The agency or person administering benefits shall be advised that the representative payee has not made payment for services, including food and shelter.
- (e) If the full or negotiated payment is received prior to termination of placement, placement shall continue uninterrupted.
- (f) Should the individual and/or LRR(s) request a revision of the amount to be paid or notify the Division of an inability to pay in accordance with N.J.A.C. 10:46-2.4 (n), the Division shall investigate the circumstances.

1. The notice that the Division may initiate termination, collection or other appropriate action shall remain in effect while the Division conducts the investigation.
  2. While the Division is conducting the investigation, the Division shall continue funding the placement until a determination whether an adjustment in the amount to be paid is made.
- (g) If the individual is in a residential placement and the individual is capable of paying for the cost of care and maintenance but has refused to do so, a notice shall be sent by the Division establishing a date certain upon which funding of that program shall cease.
1. If the individual is incapable of paying and the LRR(s) refuses to pay the assessed amount, the Department shall file a collection or other appropriate action to recover the portion of cost which the LRR(s) is responsible to pay.
- (g) If a competent individual is in a residential placement and is refusing to pay the assessed amount, the regional staff shall meet with the individual and other interested parties no fewer than 30 days before the scheduled date for services to end to discuss the individual's future living arrangements. The individual and other interested parties shall again be requested to make full payment at that meeting. If the competent individual who is capable of paying for the cost of services will not make payment, the Division may seek appropriate relief, including, but not limited to, a court order of removal, collection, wage garnishment and/or other appropriate action for failure to make payments.
- (i) If the LRR(s) will not make payment, the Division shall, if appropriate, seek to return a minor child to the LRR(s) residence. If returning the individual home is deemed not feasible by the Division due to the risk of abuse, neglect or exploitation, the Division shall initiate proceedings in Superior Court to obtain payment from the LRR(s) in addition to other available actions.
- (j) Termination procedures shall be deferred, if appropriate, when there is an unavoidable change of representative payees or other responsible parties. Examples of this would be the death of a LRR or representative payee, the transfer of representative payee, or the appointment of or change in a legal guardian. In such instances, the Division shall be notified of this change as soon as possible
- (k) Where the individual receiving services has a court appointed legal guardian, but controls his or her own funds and refuses to make the



assessed payments, the Division may seek, in addition to other available remedies, to have a guardian of the property appointed.

## **SUBCHAPTER 7. APPEALS PROCESS**

### **10:46-7.1 Appeals**

- (a) If the individual is determined by the Division not to meet the criteria for eligibility prior to the financial determination, the Division shall notify the individual in writing within 30 working days of the determination.
  - 1. The notice shall include specific criteria which were not met by the individual.
  - 2. The notice shall include information regarding the individual's right to appeal the determination of ineligibility pursuant to N.J.A.C. 10:48-1. Such appeals shall be deemed to be contested matters.
- (b) If the individual is determined by the Division to be eligible for functional services but the individual, LRR(s) or other responsible party disagrees with the amount that the Division determines shall be paid, the individual or his or her legal guardian or LRR(s) shall appeal within 30 days from the date of the letter notifying him or her of the calculated amount, in accordance with the procedure set forth below:
  - 1. The request for an appeal shall clearly identify the individual receiving services, the provider agency or developmental center where the individual resides and the specific issue under appeal. In addition, the appeal, specify all material facts which the individual, legal guardian or LRR(s) or his or her attorney disputes. Requests for an appeal shall also set forth all legal issues which the individual, legal guardian or LRR(s) is raising on appeal and shall present all arguments on those issues which the individual, legal guardian or LRR(s) wishes the Division to consider. The individual, legal guardian or LRR(s) shall explain in detail why the calculated amount is inaccurate.
    - i. If the individual is receiving residential services, he or she or the LRR(s) shall be responsible to begin to pay the assessed amount unless otherwise agreed to by the Division. The disputed portion of the assessed amount shall be placed into an escrow account by Department staff until the appeal procedure is complete.
    - ii. The request for an appeal shall be sent to:

Administrative Practice Officer

Division of Developmental Disabilities  
P.O. Box 708  
Trenton, NJ 08625-0708

2. All termination proceedings shall be suspended during the pendency of the appeal process.
  3. The Department, or its contracted agent, shall have 30 days from receipt of the request for an appeal to determine if the amount of the financial assessment was properly calculated based upon the documentation and facts presented in the request for an appeal in (b) 1 above.
- (c) Where an appeal request appears to set forth disputed material facts, the Director may require the individual, legal guardian or LRR(s) and his or her attorney, if any, to attend a pre-transmittal conference conducted by a designated employee of the Division.
1. The Division shall notify the individual, legal guardian or LRR(s) of the date, time and place of the pre-transmittal conference scheduled pursuant to this subchapter. The pre-transmittal conference shall be held no later than 45 days following the recalculation of the assessed amount by the Department or its contracted agent.
  2. The purpose of the pre-transmittal conference shall be to clarify disputed material facts and legal issues raised in the appeal request; to review the evidence upon which the individual, legal guardian or LRR(s) bases his or her claim; to answer questions on how the amount due was calculated; and to attempt to resolve the dispute.
  3. Where the Division and an individual, legal guardian or LRR(s) cannot reach a resolution of the dispute and the Division representative determines that disputed material facts do exist, the appeal shall be transmitted to the Office of Administrative Law as a contested case. The Division may choose to notify the Office of Administrative Law that it will not be sending a representative to the hearing.
  4. If it is apparent to the Division representative that no material facts are in dispute as alleged, the representative shall detail the lack of disputed material facts in writing and ask the Director to decide the appeal based upon a summary review of the record as set forth in (e) below. The Director shall allow the individual, legal guardian or

LRR(s) to respond in writing to specify all disputed material facts and the reasons why a hearing is necessary.

5. No pre-transmittal conference shall be adjourned from the scheduled pre-transmittal conference date except for good cause and upon order of the Director or an employee designated by the Director. All requests for adjournment must be made in writing, with the reasons specified therein, no later than seven days before the date scheduled for the pre-transmittal conference. All requests shall be sent to the following address:

Administrative Practice Officer  
Division of Developmental Disabilities  
P.O. Box 708  
Trenton, NJ 08625-0708

6. In the event an individual, legal guardian or LRR(s) fails to attend a pre-transmittal conference wherein an adjournment has not been granted, the Division shall determine that the individual, legal guardian or LRR(s) has abandoned the request for a hearing and shall decide the appeal pursuant to (e) below.
- (d) Where an appeal request fails to set forth any disputed material fact and fails to set forth any legal issue or any argument on those issues, the request for a hearing or further review shall be denied. The Division shall notify the individual, legal guardian or LRR(s) of this denial and the grounds thereof, and shall notify the individual, legal guardian or LRR(s) that the proposed action shall become effective on such date at the Division shall specify. Such notice shall constitute the final agency decision in the matter.
  - (e) Where there are no disputed material facts and an appeal sets forth one or more disputed legal issue(s) and presents arguments on these issues, the Director may consider those legal issues and arguments in a paper review of the written record. There shall be no discovery, but the individual, legal guardian or LRR(s) shall have the opportunity to submit written arguments. The Director shall consider these arguments, if any, the materials presented at the pre-transmittal conference, if any, and all prior documents regarding the determination of fees. The Director shall render a written determination which shall constitute the final agency decision in the matter.